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SEC

SERVICE DATE - LATE RELEASE JUNE 27, 2001

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34052

GREEN MOUNTAIN RAILROAD CORPORATION
-PETITION FOR DECLARATORY ORDER

Decided: June 27, 2001

On June 5, 2001, Green Mountain Railroad Corporation (GMRC), a Class III railroad, filed a petition asking the Board to institute a declaratory order proceeding to determine the appropriate extent of Board jurisdiction and preempted state and local actions regarding GMRC's use of its facilities in Rockingham, VT. On June 6, 2001, GMRC filed a related complaint and motion for preliminary injunction with the Federal District Court in Vermont.

On June 15, 2001, the State of Vermont (Vermont) filed a motion for a 45-day extension of time in which to respond to issues raised by GMRC in its petition. Vermont indicates that additional time beyond the 20 days set forth in 49 CFR 1104.13(a) is needed for the following reasons: (1) preparing to respond to the complex issues raised in GMRC's complaint and motion for preliminary injunction, in addition to the declaratory order request, has placed an added burden on it; and (2) the State has limited resources in which to prepare its responses in that two of the three attorneys in the Environmental Unit have pre-planned annual leave during the last two weeks of June.

On June 19, 2001, GMRC filed a reply in opposition to Vermont's extension request, arguing that Vermont has neglected to mention its threatened enforcement action against GMRC. GMRC further argues that Vermont has not addressed GMRC's need to resolve the status of its planned new construction activities at the involved facility in a timely manner that will enable GMRC to meet commitments to prospective customers awaiting such construction. GMRC urges the Board to deny the request or, at most, to grant an extension of considerably shorter duration.

On June 25, 2001, Vermont filed a supplemental memorandum in support of its extension request. Vermont asserts that GMRC's District Court complaint and preliminary injunction motion raise the same issues contained in the declaratory order petition before the Board. Accordingly, Vermont asks the Board to hold the petition in abeyance until the District Court issues a ruling or until August 9, 2001, whichever is later. In a response filed on the same date, GMRC strongly opposes this "open-ended" request.

Good cause exists to extend the due date for Vermont's response until July 30, 2001. Vermont has justified an extension of this duration. In view of the potential for enforcement action by Vermont against GMRC, however, neither a longer extension nor an indefinite extension of the time for filing a response to the GMRC's petition has been justified. Accordingly, the State's supplemental request will be denied.¹

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Vermont's motion for an extension of time is granted in part, as discussed in this decision.
2. Vermont's supplemental request to hold the matter in abeyance is denied.
3. The due date for filing a response to GMRC's petition for declaratory order is extended to July 30, 2001.
4. This decision is effective on its service date.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams
Secretary

¹ Should enforcement action be undertaken against GMRC prior to July 30, 2001, the Board would entertain a GMRC petition to advance the due date for replies to the GMRC petition.